

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CAN CAPITAL MERCHANT SERVICES
INC., a Del corp

Plaintiff/Counter-Defendant,
v.

No: 2:16-cv-10487-DPH-APP

ALL WIRELESS, INC., a Mi. corp; and
MOHAMED K. KATBEY, Guarantor,
jointly & severally

Defendants/Counter-Plaintiffs.

Richard A. Muller (P58626)
Attorney for Plaintiff/Counter-Defendant
MULLER, MULLER, RICHMOND,
HARMS, & MYERS, P.C.
33233 Woodward Ave
Birmingham, MI 48009
248/645-2440
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Deano C. Ware (P65421)
Attorney for Defendants/Counter-Plaintiffs
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**PLAINTIFF/COUNTER-DEFENDANT'S ANSWER TO DEFENDANTS/COUNTER-
PLAINTIFFS' COUNTER COMPLAINT**

NOW COMES Plaintiff/Counter-Defendant, Can Capital Merchant Services, Inc., by and through its attorneys, Muller, Muller, Richmond, Harms, & Myers, P.C., for its Answer to Defendants/Counter-Plaintiffs' Counter Complaint, and states as follows:

NATURE OF THE ACTION

1. Plaintiff/Counter-Defendant admits in part and denies in part the allegation made in this paragraph. While it is true that the parties entered into a contractual relationship whereby Defendants/Counter-Plaintiffs benefitted from the services provided by Plaintiff/Counter-Defendant, Plaintiff/Counter-Defendant strongly objects and denies the allegation that it is engaging in illegal, unfair and fraudulent business acts.

Corporate Defendant is a business and the Individual Defendant is a business man and both are held to a standard in which they are to understand the documents they are reviewing, reading, and signing, and they are bounded by their signature to the same.

JURISDICTION AND VENUE

1. That no response is necessary.

2. Plaintiff/Counter-Defendant denies the allegation made in this paragraph for the reason that the matter in controversy does not exceed \$75,000.00 exclusive of interest and cost. The matter in controversy exclusive of interest and cost is \$55,000.00, \$20,000.00 below the threshold for this Court to have jurisdiction over this hearing.

Therefore, this matter should be transferred back to the Wayne County Circuit Court at Defendants/Counter-Plaintiffs' expense.

3. Plaintiff/Counter-Defendant admits that the Defendants/Counter-Plaintiffs reside and do business within the this district, however, Plaintiff/Counter-Defendant realleges and restates its response in paragraph number two.

PARTIES

4. Plaintiff/Counter-Defendant admits to the allegation in this paragraph.
5. Plaintiff/Counter-Defendant denies the allegation in this paragraph.
6. Plaintiff/Counter-Defendant admits to the allegation in this paragraph.
7. Plaintiff/Counter-Defendant admits to the allegation in this paragraph.

COUNTER DEFENDANT CAN CAPITAL'S WRONGFUL COURSE OF CONDUCT

8. Plaintiff/Counter-Defendant neither admits nor denies the allegations in this paragraph because it is without sufficient information at this time to respond.

9. That no response is necessary as the documentation speaks for itself.

10. That no response is necessary as the documentation speaks for itself

11. Plaintiff/Counter-Defendant neither admits nor denies the allegations in this paragraph because it is without sufficient information at this time to respond.

12. Plaintiff/Counter-Defendant neither admits nor denies the allegations in this paragraph because it is without sufficient information at this time to respond.

13. Plaintiff/Counter-Defendant neither admits nor denies the allegations in this paragraph because it is without sufficient information at this time to respond.

14. Plaintiff/Counter-Defendant denies the allegations in this paragraph for the reason that the same is not true.

15. Plaintiff/Counter-Defendant denies the allegations in this paragraph for the reason that the same is not true.

16. Plaintiff/Counter-Defendant denies the allegations in this paragraph for the reason that the same is not true.

CAN CAPITAL'S TRANSACTIONS WITH DEFENDANTS/COUNTER-PLAINTIFFS

17. No response is necessary as the documents speak for themselves.

18. No response is necessary as the documents speak for themselves.

19. No response is necessary as the documents speak for themselves.

20. Plaintiff/Counter-Defendant neither admits nor denies the allegation in this paragraph for the reason that it is without sufficient information to respond.

21. Plaintiff/Counter-Defendant neither admits nor denies the allegation in this paragraph for the reason that it is without sufficient information to respond.

22. Plaintiff/Counter-Defendant neither admits nor denies the allegation in this paragraph for the reason that it is without sufficient information to respond.

23. Plaintiff/Counter-Defendant neither admits nor denies the allegation in this paragraph for the reason that it is without sufficient information to respond.

24. Plaintiff/Counter-Defendant neither admits nor denies the allegation in this paragraph for the reason that it is without sufficient information to respond.

25. Plaintiff/Counter-Defendant neither admits nor denies the allegation in this paragraph for the reason that it is without sufficient information to respond.

26. Plaintiff/Counter-Defendant neither admits nor denies the allegation in this paragraph for the reason that it is without sufficient information to respond.

27. Plaintiff/Counter-Defendant neither admits nor denies the allegation in this paragraph for the reason that it is without sufficient information to respond.

28. Plaintiff/Counter-Defendant neither admits nor denies the allegation in this paragraph for the reason that it is without sufficient information to respond.

29. Plaintiff/Counter-Defendant neither admits nor denies the allegation in this paragraph for the reason that it is without sufficient information to respond.

COUNT ONE

(For Violation of Michigan and Delaware Usury Laws Del. Title 6, Subtitle II, Chapter 23, Sec. 2301 et seq., Michigan Compiled Laws, 493.110)

30. Plaintiff/Counter-Defendant realleges and incorporate herein by reference paragraphs 1 through 29.

31. Plaintiff/Counter-Defendant denies the allegation in this paragraph for the reason that the same is not true.

32. Plaintiff/Counter-Defendant denies the allegation in this paragraph for the reason that the same is not true.

33. Plaintiff/Counter-Defendant denies the allegation in this paragraph for the reason that the same is not true.

34. Plaintiff/Counter-Defendant denies the allegation in this paragraph for the reason that the same is not true.

35. Plaintiff/Counter-Defendant denies the allegation in this paragraph for the reason that the same is not true.

36. Plaintiff/Counter-Defendant denies the allegation in this paragraph for the reason that the same is not true.

37. Plaintiff/Counter-Defendant denies the allegation in this paragraph for the reason that the same is not true.

38. Plaintiff/Counter-Defendant denies the allegation in this paragraph for the reason that the same is not true.

39. Plaintiff/Counter-Defendant denies the allegation in this paragraph for the reason that the same is not true.

40. Plaintiff/Counter-Defendant denies the allegation in this paragraph for the reason that the same is not true.

41. Plaintiff/Counter-Defendant denies the allegation in this paragraph for the reason that the same is not true.

42. Plaintiff/Counter-Defendant denies the allegation in this paragraph for the reason that the same is not true.

COUNT TWO

(For Violation of Michigan and Delaware Unfair Trade Practices Act Del. Title 6, Subtitle II, Chapter 25, Sec. 2531 et. seq. and Michigan Act 21 of 1939, MCL 493.12 et. seq.)

2. (sic) Plaintiff/Counter-Defendant realleges and incorporate herein by reference paragraphs 1 through 42 as though fully set forth herein.

3. (sic) Plaintiff/Counter-Defendant denies the allegation in this paragraph for the reason that the same is not true.

4. (sic) Plaintiff/Counter-Defendant denies the allegation in this paragraph for the reason that the same is not true.

38. (sic) Plaintiff/Counter-Defendant denies the allegation in this paragraph for the reason that the same is not true.

39. (sic) Plaintiff/Counter-Defendant denies the allegation in this paragraph for the reason that the same is not true.

40. (sic) Plaintiff/Counter-Defendant denies the allegation in this paragraph for the reason that the same is not true.

41. (sic) Plaintiff/Counter-Defendant denies the allegation in this paragraph for the reason that the same is not true.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff/Counter-Defendant respectfully request that this Honorable Court enter a judgment against Defendants/Counter-Plaintiffs as follows:

1. A judgment of no cause in favor of Plaintiff/Counter-Defendant and against Defendants/Counter-Plaintiffs.

2. That this Honorable Court rule that jurisdiction is not proper in this Court for the reason that the Defendants/Counter-Plaintiffs does not meet the diversity threshold.

3. For any and all available civil statutory penalties for the improper filing of this action.

4. For attorney fees as provided by law.

5. For actual costs and attorney fees for having to respond to this improper action.

6. For such other and further relief as this Court may deem just and proper.

Respectfully Submitted,

/s/ Richard A. Muller
RICHARD A. MULLER P58626
Attorney for Plaintiff/Counter-Defendant
33233 Woodward Avenue
Birmingham MI 48009
248-645-2440

Dated: March 2, 2016

CERTIFICATE OF SERVICE

Richard A. Muller, states that on March 2, 2016, he caused to be served a copy of the Plaintiff/Counter-Defendant's Response to Defendants/Counter-Plaintiffs' Affirmative Defenses and a copy of this Certificate of Service by enclosing them in a sealed envelope, with first class postage fully prepared, addressed to the following Non-ECF filers:

Deano C. Ware (P65421)
Deano C. Ware, P.C.
P.O. Box 40162
Redford, MI 48239

and deposited the envelope and its contents in the U.S. Mail.

/s/ Richard A. Muller
RICHARD A. MULLER P58626
Attorney for Plaintiff/Counter-Defendant
33233 Woodward Avenue
Birmingham MI 48009
248-645-2440

Dated: March 2, 2016